

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COMMITTEE
MINUTES
JULY 27, 2009**

PRESENT: Michael Gordon (arrived at 10:05), Mary Pangman-Schmitt (arrived at 10:07), Kevin King, Richard Hinsman, Michael Holloway, Jennifer McGinnity, Casey Clickner, and Peter Sveum

EXCUSED: Scott Minter

STAFF: Yolanda McGowan, Bureau Director; Peggy Wichmann, Legal Counsel; Michelle Solem, Bureau Assistant

GUESTS: Debbi Conrad (Wisconsin Realtors Association), Cori Lamont (Wisconsin Realtors Association) and Tracy Zucka (Wisconsin Realtors Association)

CALL TO ORDER

Peter Sveum, Chair, called the meeting to order at 10:02 a.m. A quorum of six (6) members was present.

ADOPTION OF AGENDA

MOTION: Casey Clickner moved, seconded by Richard Hinsman, to approve the agenda as published. Motion carried unanimously.

APPROVAL OF MINUTES (May 26, 2009)

MOTION: Kevin King moved, seconded by Michael Holloway, to approve the minutes of May 26, 2009 as published. Motion carried unanimously.

ADMINISTRATIVE REPORT

Yolanda McGowan introduced Michelle Solem as the new bureau assistant. Due to staff shortages, we do not know which bureau assistant will be permanently assigned to this committee.

Yolanda McGowan also gave a brief overview of the new e-credential program that has been implemented at DRL.

RECOMMENDATIONS FOR REVISION OF CONTRACTUAL FORMS

REVIEW AND REVISE DRAFT RESIDENTIAL OFFER TO PURCHASE (WB-11)

The committee discussed the idea of having a single ply form and making copies. It was decided by the committee to continue to use multi-part forms.

Peggy Wichmann informed the committee that DRL would be doing the form in-house. The Board expressed concern over the time frame for completion of the form.

Yolanda McGowan asked that any information going to the Committee be funneled through her, as bureau director. Michael Holloway expressed concern about limiting the flow of information.

Kevin King brought forth changes recommended by the Wisconsin Realtors Association (WRA). After much discussion, the committee deleted, changed and added parts to the sections listed below:

- Insert just before **appraisal contingency**:
 - ☐ This offer is not contingent on financing. Buyer shall provide Seller within ____ days of acceptance written evidence that Buyer shall have adequate funds available at closing. If Buyer does not provide written evidence, Seller has the right to cancel this offer. Buyer may or may not obtain mortgage financing but does not need the protection of a financing contingency. Seller agrees to allow Buyer's appraiser access to Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless appraisal contingency is so indicated, nor does this right of access for an appraisal constitute a financial contingency.
- Personal Delivery amended to add the following language in order to be consistent within this section:
 - “(1) Personal Delivery: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at lines xx or xx.”
- REAL ESTATE CONDITION REPORT
 - Removed the Real Estate Condition Report section from DEFINITIONS, and placed it in front of the PROPERTY CONDITION REPRESENTATIONS
- ACTUAL RECEIPT
 - Change definition from Party's “hands” to Party's “possession”
- FIXTURE
 - Change definition to remove “*satellite dishes and component parts*” and make consistent with WB-1 listing contract
- INSPECTIONS AND TESTING

- Remove duplicate sentence– “Buyer agrees to promptly restore the Property to its original condition after Buyer’s inspections and testing are completed unless otherwise agreed to with Seller”)
- To be consistent with listing contracts, added “*Buyer and licensee may be present at all inspections and testing.*”
- **BUYER’S PRE-CLOSING WALK-THROUGH**
 - amended from “within ____ days before closing” to “within 3 days before closing”
- **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** was amended to read:
 - “Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, *if any*, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, *if any*. However, if this sale is financed by a land contract or a mortgage to Seller, *any* insurance proceeds shall be held in trust for the sole purpose of restoring the Property.”
- Michael Gordon asked the committee to consider language relating to insurance claims and the possibility of having a section that says that for all claims, the repairs have been completed and the contractors have been paid. The committee chose not to address this issue in the offer to purchase form but decided that it could be an addendum.
- Insert the following sentence at the end of the BUYER’S LOAN COMMITMENT section – This can be a signature, electronic signature or an e-mail from the buyer stating that it can be distributed.
- **BUYER’S LOAN COMMITMENT** (Amended to read as follows):
 - **BUYER’S LOAN COMMITMENT:** Buyer agrees to pay all customary loan and closing costs, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of the written loan commitment no later than the deadline at line xxx. Buyer and Seller agree that delivery of a copy of any written loan commitment to seller (even is subject to conditions) shall satisfy Buyer’s financing contingency if after review of the load commitment Buyer has directed, in writing, delivery of the loan commitment. Delivery shall not satisfy this contingency if accompanied by a notice of unacceptability. CAUTION: The delivered commitment may contain the conditions Buyer must yet satisfy to obligate the lender to provide the loan. ***BUYER, BUYER’S LENDER AND AGENTS OF BUYER OR SELLER SHALL NOT DELIVER A LOAN COMMITMENT TO SELLER OR SELLER’S AGENT WITHOUT BUYER’S PRIOR APPROVAL UNLESS ACCOMPANIED BY A NOTICE OF UNACCEPTABILITY.***

- APPRAISAL CONTINGENCY/RIGHT TO CURE section is amended to take into consideration the new Mortgage Disclosure Improvement Act and will read as follows:

“This contingency shall be deemed satisfied unless Buyer, within ____ days of acceptance, delivers to Seller, and to listing broker if Property is listed, a copy of the appraisal report which indicates that the purchase price is not equal to or greater than the appraised value. If the appraisal report does not indicate an appraised value for the Property equal to or greater than the purchase price, Buyer may terminate this Offer upon written notice to Seller. *CAUTION: An appraisal ordered by Buyer’s lender may not be received until shortly before closing. Consider whether deadlines provide adequate time for performance.*”

- GAP ENDORSEMENT section amended at lines 309-313 to delete the check box (☐) and insert the following language:

- “Seller shall provide a “gap” endorsement at (Seller’s)(Buyer’s) [STRIKE ONE – “Seller’s” if neither struck] cost to provide coverage for any liens or encumbrances first filed or recorded after the effective date of the title insurance commitment and before the deed is recorded, provided the title company will issue the endorsement. If a gap endorsement is not available, Buyer may give written notice that title is not acceptable for closing. (See lines 319-325).”

- DISTRIBUTION OF INFORMATION section re-formatted at lines 334-340 to clarify authority to distribute information related to the transaction:

- “Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; and (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry.”

- DEFAULT section at lines 346-347 amended to remove the language that has been a source of confusion to parties:

- “If Buyer defaults, Seller may:
 - (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
 - (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.”

- The WRA proposed that the DISBURSEMENT section read as follows hereby deleting the reference to rule RL 18.09 and adding a provision by which the broker will return the earnest money to the payor within 90 days of the date set for closing if it has not yet been disbursed:

- DISBURSEMENT: If negotiations do not result in an accepted offer, the earnest money shall be promptly disbursed (after clearance from payor’s depository

institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to the Offer. If said disbursement agreement has not been delivered to broker within 60 days after the date set for closing, broker may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; or (4) any other disbursement required or allowed by law. Broker may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and broker may deduct from the earnest money any costs and reasonable attorneys fees, not to exceed \$250, prior to disbursement. If the earnest money has not been disbursed within 90 days after the date set for closing, broker shall return the earnest money back to the original payor.

Because this is in reference to a rule that appears to contradict itself, the committee discussed the idea of a rule change. The committee asked that this rule change be put on the fast track with the hopes that it can be included in the offer to purchase. Peggy Wichmann is going to check into putting this change through as an emergency rule change. She is going to look at the emergency rule that was created last year for RL 16 which disallowed unnumbered lines in the contract but left them available in the addendums. Kevin King suggested that this is an emergency due to the inconsistency of the rule and that it is in the best interest of the consumer. The committee agreed to recommend to the Real Estate Board and the Legislature a rule change suggested by WRA that deletes from RL 18.09(1) (b) "An offer to purchase, lease, exchange agreement or option is not a written earnest money disbursement agreement for the purpose of this subsection." This will remove the contradiction between (b) and (f) of 18.09(1) and allowing the change to the disbursement of the earnest money requested by the committee.

- Removed check box (☐) from RIGHT TO CURE section and reworded for clarity.
 - "RIGHT TO CURE: Seller (shall) (shall not) [STRIKE ONE] have a right to cure the defects. (Seller shall have a right to cure if no choice is indicated.) If Seller has right to cure, Seller may satisfy this contingency by: (1) delivering written notice to Buyer within 10 days of Buyer's delivery of the Notice of Defects stating Seller's election to cure defects, (2) curing the defects in a good and workmanlike manner and (3) delivering to Buyer a written report detailing the work done within 3 days of closing. This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and: (1) Seller does not have a right to cure or (2) Seller has a right to cure but: a) Seller delivers written notice that Seller will not cure or b) Seller does not timely deliver the written notice of election to cure. SEE LINES xx – xx FOR DEFINITION OF "DEFECT."
- **NOTICE ABOUT SEX OFFENDER REGISTRY** was changed to add the disclosure to make consistent with the agency agreements (listing contracts and buyer agency agreement).
 - "You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.widocoffenders.org> or by telephone at (608) 240-5830."

Peggy Wichmann will work with Kevin King to draft a final copy for the next meeting. Peggy Wichmann will work with Peter Sveum to review the “final draft” for inclusion in the Real Estate Board agenda packet for the August 20 board meeting with the understanding that the next committee meeting may yield additional changes that will be highlighted for the Board and included as a red folder item.

Kevin King reminded the committee they had previously decided to remove the following sentence from the WB-11 in favor of a more appropriate inclusion in WB-41.

“Once delivered, a notice cannot be withdrawn by the Party delivering the notice without the consent of the party receiving the notice.”

REVIEW OF OTHER CONTRACTUAL FORMS FOR REVISION

None.

MEDIA REPORTS RELATING TO THE PRACTICE OF REAL ESTATE

Yolanda McGowan provided the page of the Wheeler report that outlined a ruling issued by The Supreme Court of Wisconsin. The case (Douglas Olson v. Harold Dennison) focused on the remedies provided in the WB-11.

SCHEDULE FUTURE MEETING DATES

Next Meeting: August 17 – 10:00 – 12:1A

ADJOURNMENT

MOTION: Mike Gordon moved, seconded by Richard Hinsman, to adjourn the meeting at 2:00 p.m. Motion carried unanimously.